

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5399 of 1995

WITH

CIVIL APPLICATION NO. 5213 OF 1996.

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

Nos. 1 to 5 No.

GUJARAT SMALL INDUSTRIES

Versus

JAYENDRA RAVISHANCHANDRA SHAH

Appearance:

MR PV HATHI for Petitioner

MR.TR MISHRA for Respondent

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/07/96

ORAL JUDGEMENT

The respondent herein had moved an application under section 33(C)(2) for recovery of an amount of Rs.2332/- for performing additional duties. This Recovery Application was allowed by the Labour Court, Ahmedabad vide its order dated 27.3.1995 which is impugned in this Special Civil Application by the petitioner corporation. The corporation has challenged the impugned order dated

27.3.1995 on the ground that the respondent had in fact not been given additional charge and the Labour Court has allowed the application relying upon rule 44 ignoring the circulars which had been issued by the Managing Director.

I have heard learned counsel and have perused the language of rule 44 as also the circulars dated 19.6.1979, 19.11.1979 and yet another circular issued by the Managing Director. These circulars had been placed on record before the Labour Court as Exhibits 18, 19 and 20. The Labour Court has rightly held that the circulars cannot have an over riding effect over the rule and that the rule will prevail. Mr.Hathi submits that rule 44 is not a statutory rule but it is not disputed that the rule 44 was never amended. According to rule 44 the allowance is to be paid for performing additional duties at the rate of 20% of the basic pay or 20% of the minimum pay of the additional post whichever is more provided that no charge allowance is admissible if the period is less than ten days. Even in the present Special Civil Application, it is admitted in the pleadings that due to paucity of work in the refund section, one Shri P.V.Nair working as Assistant in the said department was transferred to another department in the month of November, 1981 and the duties discharged by said Shri P.V.Nair were divided amongst the remaining staff working in the refund section and the present respondent was also entrusted with some work and was not given the whole charge of the duties discharged by said Shri P.V.Nair. It is therefore clear that the respondent may not have been given additional charge as a whole of the post which was held by Shri Nair in the refund section but he was certainly asked to carry on the part of the work of Mr.P.V.Nair in addition to his own duties. The respondent had thus performed the additional duties for a period of more than ten days and in this view of the matter the claim of the respondent for a sum of Rs.2332/- which has been allowed by the Labour Court in the facts and circumstances of the case does not call for any interference by this court. The impugned order appears to be just and proper in view of the admitted factual position. There is no merit in this Special Civil Application the same is hereby dismissed. Rule is hereby discharged. No order as to costs.

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As the main Special Civil Application itself has been disposed of, no orders are required to be passed in this Civil Application. The Civil Application is disposed of accordingly.
